2001

State of Utah v. Darwin A. Mecham : Brief of Appellee

Utah Court of Appeals

Julie George; Attorney for Appellant; Joanne C. Slotnik; Assistant Attorney General; Mark L. Shurtleff; Attorney General; Herbert W. Gillespie; Duchesne county Attorney; Attorneys for Appellee.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 20010757-CA
DARWIN A. MECHAM,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

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APPEAL FROM A CONVICTION FOR POSSESSION OF CLANDESTINE LABORATORY PRECURSORS AND/OR EQUIPMENT WITHIN 500 FEET OF A RESIDENCE, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §§ 58-37d-4 AND -5 (1998), AND ABSCONDING FROM SUPERVISION, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-8-309.5(2) (1999) IN THE EIGHTH JUDICIAL DISTRICT COURT IN AND FOR DUCHESNE COUNTY, THE HONORABLE A. LYNN PAYNE, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction for possession of clandestine laboratory precursors and/or equipment within 500 feet of a residence, a first degree felony, and absconding from supervision, a third degree felony. This Court has jurisdiction over the appeal pursuant to the pourover provisions of Utah Code Ann. §§ 78-2-2(4) and 78-2a-3(2)(j)(1999).

STATEMENT OF THE ISSUE ON APPEAL AND STANDARD OF APPELLATE REVIEW

Can this Court determine that the trial court committed plain error by allowing defendant to appear before the jury in handcuffs, where defendant concedes that no record evidence supports such a claim?

Where an issue has no record support, it has not been properly presented for appellate review. No standard of review

applies.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Disposition of this case does not require consideration of any constitutional provisions, statutes, or rules.

STATEMENT OF THE CASE

Defendant was charged with one count of possession of clandestine laboratory equipment and/or precursors, a first degree felony, and one count of absconding from supervision, a third degree felony (R. 37-38). Following a jury trial, he was convicted as charged (R. 193-95). The trial court sentenced defendant to five years to life in prison on the first degree felony and zero to five years on the third degree felony. The court ordered the sentences to run concurrently with each other, consecutive to the sentence defendant was already serving. The court also imposed fines of $2500 (R. 194). This timely appeal followed (R. 199).

STATEMENT OF THE FACTS

The underlying facts, involving defendant's role in the operation of a clandestine drug laboratory, are not necessary to the disposition of the case.

SUMMARY OF ARGUMENT

Defendant's bare allegation of plain error fails from the outset. Where no record evidence supports the claimed error, an appellate court presumes the regularity of the proceedings below

and affirms the decision rendered by the trial court.

ARGUMENT

DEFENDANT'S ARGUMENT FAILS FROM THE OUTSET BECAUSE HE CANDIDLY CONCEDES THAT NO RECORD EVIDENCE BEYOND HIS OWN BALD ASSERTION SUPPORTS HIS CLAIM THAT THE JURY SAW HIM HANDCUFFED DURING TRIAL

Defendant contends that "[t]he trial court committed plain error when it allowed the jury to view [him] with handcuffs on in front of the jury." Br. of App. at 7. At the same time, defendant candidly concedes "that there is no written proof of the jury seeing him in handcuffs because his trial attorney and the trial Court [sic] failed [to] recognize the error and preserve the issue for appeal." Id. at 7-8. He further states:

> [Defendant] admits that no where [sic] in the trial court transcript does it indicate that the Court was made aware that he was seen in handcuffs by the jury. Additionally, no where [sic] on the record does it indicate that the defense attorney ask[ed] for a mistrial on the issue. However, [defendant] asserts that he was seen on two occasions by the jury in handcuffs (T. 197-198).

Id. at 8.

The genesis for defendant's appellate claim is a single line in a letter he sent to the trial court five days after his conviction. See R. 197-98. In that letter, defendant asks the Court for a retrial, citing three justifications for his request. The second of these states: "(2) Twice the jury saw me in handcuffs. I feel that had a lot [sic] to do with the Verdict

[sic]." (R. 197). Defendant closes his letter by stating, "I wish for this document to stand as my official request for either a retrial or an appeal" (R. 198).

In response to this letter, the trial court made the following entry in the record:

> The Court reviewed a letter from [defendant] received on 8-29-2001 and asked that a hearing be set on this matter to discuss the issues outlined in the letter. The Court then received, on the same day, a Notice of Appeal, from [defense counsel]. The clerk was then instructed to follow proceedure [sic] requested by [defense counsel].

R. 201. The trial court thus construed defendant's personal request for a retrial or an appeal as supplanted by the formal notice of appeal submitted by his counsel. In essence, the trial court determined that the notice of appeal served as a withdrawal of defendant's request for a new trial.[1] Defendant's lack of subsequent correspondence attests to his tacit agreement with the court's interpretation of his filing. And his docketing statement, which clearly included the issues articulated by defendant in his letter to the trial court, further confirms the

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[1] In the event that this Court determines that counsel's notice of appeal stands apart from defendant's pro se letter, and that his request constitutes an independent motion for new trial, then this Court has no jurisdiction to hear the appeal because the notice of appeal was filed before disposition of the motion for new trial. See Utah R. App. P. 4(b)(notice of appeal filed before disposition of motion for new trial "shall have no effect"). Under such circumstances, this Court should dismiss defendant's appeal for lack of jurisdiction.

correctness of the court's interpretation. See R. 210.

This Court is now faced with an appellate claim of plain error, asserted for the first time in a post-conviction letter, and a trial record devoid of any evidence to support the claim. Under such circumstances, this Court's role is clear:

> When a defendant predicates error to this Court, he has the duty and responsibility of supporting such allegation by an adequate record. Absent that record, defendant's assignment of error stands as a unilateral allegation which the review court has no power to determine. The Court simply cannot rule on a question which depends for its existence upon alleged facts unsupported by the record.

State v. Wulffenstein, 657 P.2d 289, 293 (Utah 1982)(citations omitted). Absent a record to support a claim asserted on appeal, this Court presumes the regularity of the proceedings below and affirms the trial court's determination. State v. Eloge, 762 P.2d 1,2 (Utah 1988); Call v. City of West Jordan, 788 P.2d 1049, 1053 (Utah App. 1990).

CONCLUSION

For the reasons stated, this Court should affirm defendant's conviction.

RESPECTFULLY submitted this 15th day of July, 2002.

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Attorney General

Joanne C. Slotnik

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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to Julie George, 32 Exchange Place, Suite 101, Salt Lake City, Utah 84111, this 15th day of July, 2002.